Channel Island Development Corp., d/b/a The Lobster Trap & Casa Sirena Marina Hotel *and* Warehouse, Processing & Distribution Workers Union, Local 26, International Longshoremen's & Warehousemen's Union *and* Culinary Alliance & Bartenders Union, Local 498, Hotel & Restaurant Employees and Bartenders' International, AFL-CIO. Cases 31-CA-9050, 31-CA-9272, and 31-RC-4493

January 25, 1982

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On July 28, 1981, Administrative Law Judge George Christensen issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record[1] and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[2] and conclusions [3] of the Administrative Law Judge and to adopt his recommended Order as modified herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Channel Island Development Corp., d/b/a The Lobster Trap & Casa Sirena Marina Hotel, Oxnard, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order as so modified:

1. Insert the following as paragraph 2(d) and reletter the subsequent paragraphs accordingly:

"(d) Expunge from its files any reference to the discharges of Arnalfo Cortez, Ignatio Cortez, Jr., and Manuel Merino on May 17, 1979, and notify them, in writing, that this has been done and that evidence of this unlawful discharge will not be used as a basis for future discipline against them."

2. Substitute the attached notice for that of the Administrative Law Judge.

IT IS FURTHER ORDERED that the election in Case 31-RC-4493 be, and it hereby is, set aside, and that a new election shall be conducted in accordance with the Direction of Second Election set forth below.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT interrogate our employees concerning their and other employees' activities on behalf of, sympathy for, or their desires with respect to representation by Warehouse, Processing & Distribution Workers Union, Local 26, International Longshoremen's & Warehousemen's Union, or Culinary Alliance & Bartenders Union, Local 498, Hotel & Restaurant Employees and Bartenders International, AFL-CIO, or any other labor organization.

WE WILL NOT maintain a surveillance of our employees' activities on behalf of either of the above or any other labor organization.

WE WILL NOT threaten to demote our employees because of their activities on behalf of

[1] Respondent's request for oral argument is hereby denied as the record and briefs adequately present the issues and positions of the parties.

[2] We find without merit Respondent's allegations of bias on the part of the Administrative Law Judge. There is no basis for finding that bias or partiality existed only because the Administrative Law Judge resolved important factual conflicts in favor of the General Counsel's witnesses. As the Supreme Court has stated "total rejection of an opposed view cannot of itself impugn the integrity or competence of a trier of fact." *N.L.R.B.* v. *Pittsburgh Steamship Co.*, 337 U.S. 656, 659 (1949). Moreover, as it is the Board's established policy not to overrule an administrative law judge's resolutions as to credibility except where, as is not the case here, the clear preponderance of all the relevant evidence convinces us that the resolutions were incorrect, we find, contrary to Respondent's contention, no basis for disturbing the Administrative Law Judge's credibility findings. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3rd Cir. 1951).

[3] In affirming the Administrative Law Judge's finding that Respondent violated Sec. 8(a)(1) when executive housekeeper Palacio interrogated employees on or about April 23, 1979, we note that Palacio only admitted asking employees if they had heard anything about a union representative being at the hotel over the weekend. Employee witnesses credibly testified, however, that Palacio also inquired whether cards had been circulated and whether the employees had been asked to join a union. Although we find Palacio's admitted interrogation sufficient to establish a violation, we find the further interrogations established by credited testimony were likewise unlawful.

In adopting the Administrative Law Judge's recommendation to set aside the election, we do not rely on Palacio's unlawful interrogation of employee Cortez inasmuch as it occurred after the election, according to Cortez' credited testimony.

the above-named or any other labor organization.

WE WILL NOT threaten our employees with discharge to discourage employees from seeking and securing representation by the above-named or any other labor organization.

WE WILL NOT discharge our employees to discourage our employees from seeking and securing representation by the above-named or any other labor organization.

WE WILL NOT condition the reinstatement of any employees discharged to discourage their and other employees' support of the above-named or any other labor organization or their abstention from that support.

WE WILL NOT grant wage increases to discourage our employees from seeking and securing representation by the above-named or any other labor organization.

WE WILL NOT promise improvements in wages and benefits if our employees will refrain from seeking and securing representation by the above-named or any other labor organization.

WE WILL NOT threaten reductions in wages and benefits if our employees seek and secure representation by the above-named or any other labor organization.

WE WILL NOT threaten our employees with the futility of seeking and securing representation by Local 498 by threatening not to sign any contract with that Union containing wage and benefit provisions unless that contract contains wage and benefit provisions lower than those we currently provide.

WE WILL NOT solicit grievances from our employees and promise to resolve them to discourage their seeking and securing representation by the above-named or any other labor organization.

WE WILL NOT otherwise interfere with, restrain, or coerce our employees in the exercise of their rights under Section 7 of the Act to form, join, or assist the above-named or any other labor organization, to bargain collectively through the above-named or any other labor organization, to engage in other concerted activities for the purpose of collective bargaining or mutual aid or protection, or to refrain from any or all of those activities.

WE WILL reinstate Arnulfo Cortez, Ignatio Cortez, Jr., and Manuel Merino to their former positions or, if those positions no longer exist, to substantially equivalent positions, if necessary terminating any employees hired to replace them.

WE WILL expunge from our files any reference to the discharges of Arnulfo Cortez, Ignatio Cortez, Jr., and Manuel Merino on May 17, 1979, and WE WILL notify them that has been done and that evidence of the unlawful discharge will not be used as a basis for future discipline against them.

WE WILL make those three employees whole for any wage and benefit losses they have suffered because we discharged them to discourage their and other employees' union support, with interest.

CHANNEL ISLAND DEVELOPMENT CORP., D/B/A THE LOBSTER TRAP & CASA SIRENA MARINA HOTEL

DECISION

STATEMENT OF THE CASE

GEORGE CHRISTENSEN, Administrative Law Judge: These cases were heard before me on April 1, 2, 3, 4, 22, 23, and 24, and July 15 and 16, 1980, in Ventura, California, to resolve issues raised by a consolidated complaint issued by the Regional Director for Region 31 of the National Labor Relations Board based on a charge filed by Warehouse, Processing & Distribution Workers Union, Local 26, International Longshoremen's & Warehousemen's Union (Local 26), on June 4, 1979, in Case 31-CA-9050 and a charge filed by Culinary Alliance & Bartenders Union, Local 498, Hotel & Restaurant Employees and Bartenders' International, AFL-CIO (Local 498), in Case 31-CA-9272 on August 9, 1979, and amended on November 7, 1979,[1] against Channel Island Development Corp., d/b/a The Lobster Trap & Casa Sirena Marina Hotel (the Respondent). Local 498's objections that certain conduct of the Respondent alleged in its charges prevented a fair election in Case 31-RC-4493 are also before me for resolution.

The Respondent operates a hotel and a restaurant in Oxnard, California. Local 498 launched a campaign to organize the Respondent's hotel employees and Local 26 launched a campaign to organize the Respondent's restaurant employees in early and mid-1979. Local 498's campaign culminated in an election on July 12 which resulted in a tie vote and union objections to the Respondent's conduct allegedly affecting that outcome. The consolidated complaint and the election objections allege that the Respondent interfered with the hotel employees' exercise of a free choice in the election and attempted to discourage its hotel employees from supporting Local 498 in the election, in violation of Section 8(a)(1) of the National Labor Relations Act, as amended (the Act), by:

1. Interrogating hotel employees about their and other employees' activities on behalf of Local 498.

2. Telling a hotel employee in the past that, when another union tried to organize the hotel's employees, the employees who supported that union were discharged.

[1] Read 1979 after all further date references omitting the year.

3. Telling a hotel employee eligible to vote in the election that she was not eligible to vote.

4. Threatening a hotel employee with the discharge of those hotel employees who initiated Local 498's campaign.

5. Informing a hotel employee that it was futile for the hotel employees to select Local 498 as their bargaining representative, since the Respondent would not sign a contract with it.

6. Threatening hotel employees with reductions in benefits and wages and loss of the Respondent's personal loan program if the hotel employees sought and secured union representation.

7. Promising hotel employees free uniforms, paid sick leave, premium pay for holidays, leaves of absence, wage increases, and a dental plan, if they desisted from seeking and securing union representatives.

8. Soliciting grievances from hotel employees and promising to remedy them.

9. Granting employees wage increases.

The consolidated complaint also alleges that the Respondent interfered with Local 26's organizational effort and violated Section 8(a)(1) and (3) of the Act by discharging several employees to discourage those and other employees' support of Local 26 and violated Section 8(a)(1) of the Act by conditioning recall of the discharged employees on their abandoning further support of Local 26 and by maintaining a surveillance of its restaurant employees' union activities.

The Respondent denies it committed the acts alleged, denies it violated the Act and interfered with the employees' exercise of a free choice in the election, and moves the complaint and petition be dismissed or (re the petition) the election objections be overruled and the election result certified.

The major issues for resolution are whether the Respondent committed the acts alleged and, if so, whether by such commission it violated the Act and interfered with the employees' free choice in the election.

The parties appeared by counsel at the hearing and were afforded full opportunity to adduce evidence, examine and cross-examine witnesses, argue, and file briefs. Briefs were filed by the General Counsel and by the Respondent.

Based upon my review of the entire record, observation of the witnesses, and perusal of the briefs, I enter the following:

FINDINGS OF FACT

I. JURISDICTION AND THE LABOR ORGANIZATIONS

The complaint alleges, the answer admits, and I find that at all pertinent times the Respondent was an employer engaged in commerce and in a business affecting commerce and Locals 498 and 26 were labor organizations within the meaning of Section 2(2), (5), (6), and (7) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES AND ELECTION MISCONDUCT

A. *Background*

At the time Locals 498 and 26 launched their organizational campaigns among the Respondent's hotel and restaurant employees, there were approximately 45 employees in the hotel unit Local 498 sought to represent[2] and 34 employees in the restaurant unit[3] Local 26 sought to represent. The two campaigns were conducted independently.

Between April 14 and 22 Carolyn Herrera, a hotel employee, solicited and secured the signatures of a majority of the employees in the hotel unit to cards authorizing Local 498 to represent them for collective-bargaining purposes. On April 23 Local 498 filed with the Regional Director a petition for certification (based on those cards) as the restaurant unit's exclusive collective-bargaining representative (Case 31-RC-4493).

On April 25 and May 2, Local 26's representative, Fritz Conle, conducted meetings at the home of Ignacio Cortez, Sr. (Cortez Sr.). Cortez Sr., was a restaurant employee, as were his sons Ignacio Cortez Jr. (Cortez Jr.), and Arnulfo Cortez (A. Cortez). The wife of Cortez Sr., and mother of Cortez Jr., and A. Cortez, Emilia Cortez (E. Cortez), who was employed as a maid in the hotel unit, also attended. Conle solicited and secured the signatures of Cortez Sr., Cortez Jr., A. Cortez, and other employees to cards authorizing Local 26 to represent them for collective-bargaining purposes. Conle also supplied the Cortezes (other than E. Cortez) with blank cards which they utilized in soliciting and securing the signatures of other restaurant employees for return to Conle.

Cortez Jr., A. Cortez, and a third cook were discharged in mid-May.

An election was conducted among the hotel unit employees on July 12; the result was a tie vote. Local 498 filed timely objections to the election.

The complaint and election objections allege that, between April 23 and July 12, the Respondent prevented a fair election and violated the Act by various acts and conduct specified above. The complaint further alleges that the Respondent discharged the three cooks in mid-May to discourage employee support of Local 26, conditioned their rehire on their abandonment of further support of Local 26, and maintained a surveillance of the restaurant employees' activities on behalf of Local 26, thereby violating the Act.

The alleged election interferences and violations shall be treated in chronological sequence below.

B. *The Alleged April Hotel Employee Interrogations—Palacio*

The complaint and objections allege that in April the Respondent's executive housekeeper, Frances Palacio,[4]

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[2] Maids, housemen, floor supervisors, hotel maintenance men, bellmen, and gardeners.

[3] Cooks, food preparers, kitchen helpers, and dishwashers.

[4] I find at all pertinent times Palacio was a supervisor and agent of the Respondent acting on its behalf.

interrogated hotel employees concerning their union activities, sympathies, and desires, thereby violating Section 8(a)(1) of the Act and interfering with the employees' free choice in the election.

Palacio, following her normal practice of not working weekends, did not work on Saturday and Sunday, April 21–22. Shortly after she came to work on Monday, April 23, several maids informed her that over the previous weekend a union tried to get into the hotel, a union representative was on the hotel premises, and Carol Cordin, one of the housekeeping supervisors, was behind the effort to bring the Union in.[5] Palacio immediately informed Stephen Erdos, the Respondent's general manager,[6] that several maids told her a union had been on the premises attempting to organize; Erdos asked her who initiated the union campaign; and she replied it was one of the floor supervisors, Carol Cordin.[7] When she later received information Herrera was involved in the organizational effort, Palacio relayed that information to Erdos.[8]

In any event, it is undisputed after receiving the initial reports of union activity at the hotel premises over the April 21–22 weekend Palacio made a tour of the hotel and engaged a number of the housekeeping department employees in conversation.

At one point in her testimony Palacio denied she discussed a union with any of the employees during her tour and denied any of the employees discussed a union with her; after confrontation with her pretrial affidavit, however, she changed her testimony and conceded, as stated in the affidavit, that during her tour she asked the employees she contacted what they had heard about a union and whether they were asked to join a union.[9]

Several hotel employees testified Palacio questioned them on April 23 concerning union activities. Maid E. Cortez testified, that, during the morning of April 23, Palacio approached her in the hotel room where she was working, and informed Cortez she knew someone was trying to bring a union in; that she heard a union representative was in the hotel during the weekend; that Erdos instructed her to find out if any of the employees were passing out cards at the hotel, and asked her if she knew who was passing out cards; that she replied she knew nothing about it; and that Palacio commented each maid she asked was giving her the same answer. Maid Barbara Mixon testified that Palacio approached her where she was working, stated she heard a union representative was coming around, and asked Mixon if she had seen or heard one; that she replied no; that Palacio then asked if cards were going around and whether she had signed one; and that she again replied no. A third employee, Herrera, testified that during the same week Palacio approached her, stated she had been told to ask all the housekeeping employees if they had seen or talked to a union representative, and asked Herrera if she had seen a union representative at the hotel talking to employees or passing out cards to them; and that she replied in the negative. A fourth employee, dispatcher Judy Dykes,[10] testified that Palacio asked her if she had seen a union representative at the hotel the weekend of April 21–22.

As noted above, while initially Palacio denied engaging in any discussions with any employees concerning a union on April 23, she changed that testimony when confronted with her pretrial affidavit and admitted she had. After that admission, Palacio conceded she discussed a union with E. Cortez, Cordin, Ruth Newton, Maria Gonzales, Priscilla Hanson, and Lupe Valle, but denied she engaged in any discussion of a union with Mixon, Herrera, and Dykes. Following her admission to conversations about a union with E. Cortez, Cordin, Newton, Gonzales, Hanson, and Valle, she verified the accuracy of the statement in her pretrial affidavit that she asked each of those six what they knew about the rumors that a union representative was on the premises over the weekend and whether they were asked to join a union.[11]

The contradictory and self-serving nature of Palacio's testimony is glaring and leaves little basis for crediting, other than those portions supported by her pretrial affidavit. By way of contrast, the testimony of E. Cortez, Mixon, Herrera, and Dykes was mutually corroborative, consistent, and given in a straightforward and convincing manner.

On the basis of the foregoing, I credit the testimony of E. Cortez, Mixon, Herrera, and Dykes and those portions of Palacio's testimony wherein she conceded the accuracy of her pretrial affidavit; i.e., where she admitted she asked employees Cordin, Newton, Gonzales, Hanson, and Valle what they knew about the rumors that a union representative had been on the hotel premises during the weekend and whether they were asked to join a union.

I therefore find that on April 23 the Respondent, by Palacio, interrogated hotel employees concerning their and other employees' union activities, thereby violating Section 8(a)(1) and interfering with the employees' free choice in the election.

C. *The Alleged April 23 Threat to a Hotel Employee—Palacio*

The complaint and objections allege that, in or about late April or early May, Palacio told an employee that, when a union tried to get in before, employees associated

[5] Cordin is identified as "Corridon" in the transcript.

[6] I find at all pertinent times Erdos was a supervisor and agent of the Respondent acting on its behalf.

[7] While initially Palacio denied that she told Erdos one of the floor supervisors initiated the union campaign, she changed her testimony and admitted she advised Erdos it was Cordin when confronted with her pretrial affidavit so stating.

[8] At one point Palacio testified it was maid Connie Dziedic who informed her of Herrera's involvement a few days after she received the April 23 reports; at another point, she testified it was maid Priscilla Hanson who told told her of Herrera's involvement a few hours after she received the April 23 reports.

[9] The foregoing concession was made during cross-examination; on redirect, Palacio again changed her testimony, stating she only asked what they had heard about a union, denying she asked the employees if they were asked to join a union.

[10] The dispatcher assists the executive housekeeper in advising the housekeeping employees what assignments Palacio had given them, issuing linen, taking and making telephone calls as directed, preparing work schedules, preparing timesheets, etc.

[11] An admission she recanted on redirect, as noted earlier.

with the union were fired, thereby violating Section 8(a)(1) of the Act and interfering with the employees' free choice in the election.

Dykes testified that, while she was in the linen room with Palacio on April 23, the telephone rang and she answered; that Erdos was on the line and asked for Palacio; that she gave the telephone to Palacio; that she heard Palacio state she did not believe it was her department and would find out who it was; and that, after completing the conversation with Erdos, Palacio stated to her that a union tried to get into the hotel before and employees who supported it were fired.

Palacio denied the remarks attributed to her by Dykes.

Dykes was a straightforward witness and gave direct and convincing testimony; Palacio, on the contrary, as noted heretofore, repeatedly contradicted herself in a transparent effort to give testimony favorable to the Respondent.

I credit Dykes' testimony and find on April 23 the Respondent by Palacio violated Section 8(a)(1) of the Act and interfered with the employees' free choice in the election by telling an employee a union tried to get into the hotel before and employees who supported it were discharged.

D. *The Alleged May Surveillance—Marzorati and DeHoyas*

The complaint alleges that the Respondent violated Section 8(a)(1) of the Act by conducting a surveillance of its restaurant employees' union activities in May.

A. Cortez testified that, over the weekend of May 11, one of the Respondent's security guards known to him as Mario (Mario DeHoyas) visited the kitchen on several occasions and engaged him in conversation, that DeHoyas expressed interest in securing union representation and asked if the restaurant employees were interested, that he replied they already had a union, that DeHoyas stated the Teamsters were the best union, that he replied he and many other restaurant employees already signed cards with a different union, that DeHoyas asked its name, that he replied he was unable to supply its name, that DeHoyas asked him for one of the cards the restaurant employees signed, that he agreed to supply DeHoyas with a card, and that DeHoyas subsequently asked him for the card and he said he did not have one for him.[12] Cortez Sr. and Cortez Jr. testified that they also had conversations in the kitchen area with DeHoyas over the same weekend, and that during the course of those conversations during the course of those conversations DeHoyas professed interest in securing union representation, stated he favored the Teamsters or the Farm Workers unions, and drew from Cortez Sr. statements he already supported a different union (Local 26) and from Cortez Jr. an ambiguous response.

DeHoyas corroborated the testimony recited above to the extent he conceded he visited the kitchen, and spoke with members of the Cortez family there and one of them offered to secure a union authorization card for him on a date he could not recall. DeHoyas denied he solicited the views of any restaurant employees concerning union representation, and stated that one of the Cortez family solicited him to sign a card authorizing a union to represent him and offered to supply him with a card for his signature. DeHoyas "could not recall" whether Victor Marzorati, the Respondent's president,[13] assigned him to investigate union activity among the restaurant employees,[14] conceded there was a "possibility" he gave a report to Marzorati concerning information he secured concerning union activity among the restaurant employees, but that he "could not recall" whether or not he gave such a report.[15] DeHoyas did recall, however, that he reported to his immediate superior, Guard Captain Wayne Redfern, that a member of the Cortez family offered him a union authorization card.

Erdos, the Respondent's general manager, testified he received a telephone call from a waitress employed at the restaurant on a date he could not recall with certainty and the waitress informed him that Cortez Sr. announced he was going to conduct a union meeting at 10 a.m. the following day at the restaurant and immediately passed that information on to Marzorati.

Marzorati testified he contacted DeHoyas, and assigned him to check out the report, and DeHoyas reported a few days later that the alleged union meeting was not held. At one point in his testimony, Marzorati stated he made the assignment in early May; at another point, that it was in late May or early June. His pretrial affidavit places the date in early May.

Both Marzorati and Erdos learned of union activity among the hotel employees on April 23, when Local 498 filed its petition for certification as their exclusive collective-bargaining representative.[16] It reasonably may be presumed Marzorati and Erdos were vitally interested in learning whether and to what degree interest in union representation had spread to the Respondent's restaurant employees. While Marzorati testified on receiving Erdos' report of union activity among the restaurant employees, he assigned DeHoyas only to ascertain if a union meeting was scheduled to be conducted, and was indeed conducted on company premises on company time, I find that testimony suspect, particularly in view of DeHoyas' evasive testimony when questioned about the extent of his assignment and in view of his persistent questioning of the three members of the Cortez family.[17]

Whatever the limitations of DeHoyas' assignment, it is undisputable that Marzorati's agent, DeHoyas, asked questions and developed information concerning the restaurant employees' union activities at Marzorati's direc-

[12] In the interim between promising DeHoyas a card and DeHoyas' request for it, A. Cortez had second thoughts about supplying a security guard with a card and decided not to furnish it.

[13] I find at all pertinent times Marzorati was a supervisor and agent of the Respondent acting on its behalf within the meaning of Sec. 2 of the Act.

[14] Marzorati testified he assigned DeHoyas to check out a report that Cortez Sr. had scheduled a union meeting at the restaurant.

[15] Marzorati testified DeHoyas reported no union meeting was held at the restaurant.

[16] As noted above, Palacio also informed Erdos that on April 23 she received reports from several maids that a union representative contacted them in an effort to secure their support over the preceding weekend.

[17] I credit the testimony of the three members of the Cortez family; DeHoyas' testimony was evasive and in stark contrast to the convincing nature of the testimony of the Cortez family, particularly A. Cortez.

tion, and transmitted that information at least to his immediate superior, Redfern.[18]

There remains the date DeHoyas carried out his assignment. It is clear the three cooks, including A. Cortez and Cortez Jr. were discharged on May 17. It is clear, then, the DeHoyas-Cortez exchanges occurred prior to May 13, as they took place while A. Cortez and Cortez Jr. were at the restaurant, working. I find and conclude that they occurred on the dates the Cortezes testified to; i.e., the weekend of May 11–13, and that the assignment was given between May 7–11.

On the basis of the foregoing, I find and conclude that in early May the Respondent, by Marzorati and DeHoyas, conducted an inquiry into the extent and nature of union activity among the restaurant employees, thereby violating Section 8(a)(1) of the Act.

E. *The Alleged May Discriminatory Discharges and Reinstatement Offer—Marzorati, Erdos, and Sanchez*

The complaint alleges that the Respondent discharged cooks A. Cortez, Cortez Jr. and Manuel Merino to discourage their and other employees' union support, thereby violating Section 8(a)(1) and (3) of the Act, and that the Respondent additionally violated Section 8(a)(1) of the Act by conditioning a reinstatement offer addressed to Cortez Jr. on refraining from engaging in any campaign to organize the restaurant employees.

The Respondent contends that it was unaware of any union activity among the restaurant employees prior to the discharges, that the three cooks were discharged for cause, and that the alleged reinstatement offer never was made.

I reject the first contention. The three members of the Cortez family employed at the restaurant (Cortez Sr., Cortez Jr., and A. Cortez) were prime actors in Local 26's effort to organize the Respondent's restaurant employees;[19] Erdos was informed of Cortez Sr.'s union activities in early May, immediately passed on that information to Marzorati, and Marzorati immediately passed that information on to the head chef at the restaurant, Jose Sanchez;[20] Marzorati assigned guard DeHoyas to investigate the reported union activity; and, between May 11–13, DeHoyas learned that members of the Cortez family and additional restaurant employees supported a union and made a report whose details he "could not recall" concerning his investigation to Marzorati and Redfern.

On the basis of the foregoing, I find sometime between May 3 and 10 the Respondent learned of a union organizational campaign among its restaurant employees and Cortez Sr.'s involvement therein; that it became aware by May 13 other restaurant employees supported union representation, including A. Cortez.

At the time the three cooks were discharged (on May 17), Cortez Sr. had been employed at the restaurant for approximately 11 years, specializing in the cutting and preparation of fish. His sons were hired in 1975; by May they progressed to positions as cooks. Merino began work as a cook in approximately November 1979.[21] Both sons received increases of 50 cents per hour in their May 5 paychecks (covering the payroll period April 16–30), pursuant to Sanchez' recommendation (based on their work) and with Marzorati's approval. Merino received a 25-cent increase about the same time.

Cortez' two sons and Merino worked on Sunday, May 13, were not scheduled for work between May 14–16, and were scheduled to return to work on May 17. During the day shift, prior to the time Cortez Jr., A. Cortez, and Merino were scheduled to report for work (they were scheduled for the shift covering the dinner and evening hours, 4 p.m. to midnight), Cortez Sr. was at work (he was scheduled to go off work at 4 p.m.). Sometime that morning Sanchez informed Cortez Sr. that he was going to reassign A. Cortez from his position as cook back to his previous position as food preparer. Cortez Sr. did not remonstrate with Sanchez over the demotion at that time but later, recalling Sanchez told him a short time previous that A. Cortez' work was good and that Sanchez had gotten a raise for him on that premise, he reminded Sanchez he secured a raise for A. Cortez just a short time previously and stated his work was fine and asked why, despite that, he was demoting A. Cortez. Sanchez replied plans had changed; he was not going to demote A. Cortez, he was going to fire all three of the Cortezes. Cortez Sr. asked why. Sanchez replied he did not know. Cortez Sr. shortly thereafter telephoned his home and informed his sons they and he had been fired.

On receiving the call, Cortez Jr. came to the restaurant and sought out Sanchez. He asked Sanchez why he, his brother, and his father had been fired. Sanchez replied that the Company was being reorganized and Marzorati told him everyone was to be fired, including Sanchez.

When Cortez Sr. completed his shift that day, Sanchez gave him final paychecks for his two sons and Merino. Noting there was no check made out to him, Cortez Sr. asked where his check was. Sanchez responded plans had changed, he was not going to be fired.

Later in the day the three discharged cooks (Cortez Jr., A. Cortez, and Merino) came to the restaurant and asked the restaurant manager, Craig Adford,[22] why they were fired. Adford replied he did not know and suggested they contact Marzorati. The three went to Marzorati's office and were informed by Marzorati's secretary he was out of town. They went back to the restaurant, contacted Sanchez, and repeated the question. This time Sanchez stated he did not know why they were fired and promised to try to get them reinstated.

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[18] DeHoyas was vague concerning what report he made to Marzorati, failing to corroborate Marzorati's testimony he reported the allegedly scheduled union meeting was not held.

[19] Meetings for the purpose of persuading employees at the Respondent's restaurant to support Local 26 were held at the Cortezes home; all three Cortezes solicited other restaurant employees to support Local 26; two of the three solicited other restaurant employees to sign cards authorizing Local 26 to represent them, etc.

[20] I find that at all pertinent times Sanchez was a supervisor and agent of the Respondent acting on its behalf.

[21] Merino did not testify; counsel for the General Counsel stated he was in the military service stationed in the Philippine Islands at the time of the hearing.

[22] I find that at all pertinent times Adford was a supervisor and agent of the Respondent acting on its behalf.

A few hours later Sanchez telephoned Cortez Jr. at his home and told Cortez Jr.[23] he thought he could get the boys their jobs back, but they would have to promise not to bring in a union. Cortez Jr. gave the requested promise and was assured of reemployment.

The following day (May 18) Sanchez, in a conversation with Cortez Sr. referred to his conversation with Cortez Jr. the preceding evening, stating in essence the three caused their discharge by engaging in union activities, and for Cortez Sr. not to be ungrateful, since he was trying to get them reinstated. Later in the day, Sanchez assured Cortez Sr. that his sons would be rehired.

Cortez Jr. and A. Cortez went to the restaurant on May 18 and again saw Sanchez. Sanchez directed them to see Erdos, sending along a cook he recruited the previous evening as one of the replacements for the three discharged cooks, Reuben Ronquillo,[24] to act as a translator.[25] When the three arrived at Erdos' office, Ronquillo went into Erdos' office and the two Cortezes remained outside; when Ronquillo emerged, he told them (in Spanish) Erdos only wanted to hire one cook and it would look bad only to rehire one of them, so he would not rehire either of them.

On May 19 Sanchez told Ardissoni that Marzorati threatened to close down the restaurant if he did not fire the three cooks.[26]

I also find without merit the Respondent's contention that the three cooks were discharged for cause, i.e., for insubordinate conduct during their May 11 work shift following a period in which their work was of poor quality and quantity.

The Respondent contends the incident which triggered the May 17 discharge was an insubordinate remark uttered by Cortez Jr. during the May 11 evening work shift. Yet no valid evidence was produced that Cortez Jr. made the remark attributed to him;[27] *four* employees were threatened with discharge on May 17, including one noncook (Cortez Sr.), and three cooks were discharged for a remark attributed to only one of their number; Sanchez gave conflicting explanations for his threat and for the discharges and never told the three discharged cooks or Cortez Sr. the three were discharged for alleged insubordination and preceding poor work; and the discharges followed closely after the Respondent learned there was union activity among the restaurant employees and that Cortez Sr. and A. Cortez were active therein; and Sanchez in essence advised Cortez Jr. he could not secure reinstatement unless he, his brother, and Merino agreed to refrain from any support of a union.[28]

Contrary to the Respondent's contention, I find that on the basis of the evidence recited above the Respondent on May 17 threatened to demote A. Cortez and subsequently to discharge Cortez Sr., Cortez Jr., A. Cortez, and Merino to discourage union support among the restaurant employees; that the Respondent discharged Cortez Jr., A. Cortez, and Merino to discourage those activities; that the Respondent conditioned an offer to reinstate Cortez Jr. and A. Cortez, on their refraining from any effort to secure union representation; that by the threat and the conditional offer the Respondent violated Section 8(a)(1) of the Act; and that by the discharges the Respondent violated Section 8(a)(1) and (3) of the Act.

F. *The Alleged May Interrogations—Palacio*

The complaint and election objections allege that in May Palacio interrogated a hotel employee about her union activities, sympathies, and desires and later interrogated another hotel employee about her vote in the forthcoming election, thereby violating Section 8(a)(1) of the Act and inhibiting the employee's free choice in the election.

The Respondent denies that the alleged acts occurred.

Dykes testified that not long after her original (April 23) interrogation by Palacio,[29] while she, Palacio, and several maids were in the linen room, Palacio asked her what she thought about Local 498 and she replied the only union she knew anything about was the one her father belonged to, the Carpenters. Dykes also testified that not long thereafter (in May), again while she, Palacio, and several maids were in the linen room, including maid Ruth Newton, Palacio asked Newton how she was going to vote in the election and Newton replied that, if the Union were going to help the employees, she was for it and, if it were not going to help them, she was not.

Palacio testified that at some time Dykes mentioned to her that her father was in the Carpenters union, but denied the comment was made in response to her inquiry concerning Dykes' views about Local 498 and denied she asked Newton at any time how she was going to vote in the election.

For the reasons set out in section B, above, I credit Dykes' testimony and find that, in May, Palacio ques-

[23] Cortez Jr. was senior and lead cook of the three and received a higher rate of pay.

[24] Ronquillo and another cook, Bruce Ardissoni, at that time were working part time for the restaurant; both were offered and accepted full-time employment as replacements for the discharged cooks on the day of the discharge, May 17. They were not approached at any time previous and offered the jobs in question.

[25] None of the Cortezes understand or speak much English.

[26] Ardissoni's testimony to that effect is undisputed and is credited. The other findings above are based on the testimony of Cortez Sr., Cortez Jr., and A. Cortez, which I credit, discrediting contrary testimony. The three Cortezes impressed me as honest, forthright, and sincere witnesses doing their best to give truthful answers to the questions propounded to them with some difficulty arising from their failure to understand what was asked of them.

[27] Adford testified that, after a waitress came to him complaining about the way food was coming out of the kitchen, he went to the kitchen and asked what was going on; that Cortez, Jr. made a comment in Spanish; that he asked Merino what Cortez Jr. said; and that *Merino* replied Cortez Jr. stated that, if he did not like what was going on, to replace the cooks; and that he replied, "OK" and left. Headwaitress Roberta Sayers testified that one of the waitresses complained to her about the way food was coming out of the kitchen and she referred the waitress to Adford; that Adford went into the kitchen and asked what was going on; that *Cortez Jr.* replied that, if Adford did not like what was going on, to replace the cooks, and that Adford replied, "OK" and left. Cortez Jr. testified Adford came to the kitchen with regard to a waitress' complaint and he showed Adford a ticket which showed the waitress, not the cooks, made a mistake in an order and denied he made the statement attributed to him; A. Cortez had no recollection of the incident. I do not credit Sayers' testimony (she exhibited a strong tendency to tailor her testimony) and, therefore, find no valid evidence established that Cortez Jr. made the statement attributed to him.

[28] The three cooks were in close contact.

[29] See sec. B, above.

tioned Dykes about her union views, sympathies, and desires and during the same month asked Newton how she was going to vote, thereby violating Section 8(a)(1) of the Act and inhibiting employee free choice in the election.

G. *The Alleged May, June, and July Interrogations—Erdos*

The complaint and election objections allege that, in May, June, and July, Erdos interrogated a hotel employee about her union activities, thereby violating Section 8(a)(1) of the Act and inhibiting employee free choice in the election.

Herrera testified that, about a month after she secured the signatures of a majority of the hotel employees within the unit Local 498 sought to represent (in late April), she was summoned to Erdos' office; Erdos informed her that he received reports she was involved in Local 498's campaign, asked her if the rumors were correct, and she denied any knowledge of the matter; and Erdos persisted, asking why the rumors were being circulated if they were not true and she repeated her denial. Herrera testified she again was summoned to Erdos' office a few weeks later; Erdos informed her he was continuing to receive reports she was involved in Local 498's campaign and she again denied their accuracy; Erdos again raised a question concerning why he was continuing to receive such reports if they were inaccurate, and she replied a maid she had directed not to come to work (at Palacio's instructions) threatened to make trouble for her; and Erdos replied he knew about that. Herrera testified to a third conversation with Erdos a few days before the July 12 election, while the two were in the parking lot, wherein Erdos asked her what the employees thought about the election and how they were going to vote, and she replied she did not know.

Erdos confirmed he summoned Herrera to his office on one occasion, but testified he told her he received reports she was distributing union literature to the hotel employees, asked her if the report were accurate and she denied its accuracy. Erdos denied he summoned and questioned her a second time about any union activity on her part and denied he at any time asked her what the employees thought about the election and how they were going to vote.

Taking either Herrera's or Erdos' version of the May conversation, it is clear Erdos summoned Herrera to his office and asked her if she were engaging in activities in support of Local 498, and I so find. I further find, that by such conduct the Respondent violated Section 8(a)(1) and inhibited an employee's exercise of free choice in the election.

I also credit Herrera's testimony concerning the other two exchanges; she impressed me as an honest, sincere witness. I therefore find in June Erdos again interrogated Herrera concerning her union activities; in July interrogated Herrera concerning other employees' union views, sympathies, and desires; and the Respondent by those actions additionally violated Section 8(a)(1) of the Act and interfered with an employee's exercise of a free choice in the election.[30]

H. *The Alleged Unlawful April–June Wage Increases*

The complaint and election objections allege that between April and June the Respondent granted wage increases to its employees to discourage their union support, thereby violating Section 8(a)(1) of the Act and interfering with the hotel employees' making a free choice in the election.

The Respondent's payroll records reflect most of the housekeeping employees under Palacio actively employed in the Respondent's housekeeping department on April 30 received a wage increase in the paychecks they received in early May for the payroll period April 16–30, effective April 16, and the balance received increases in the third week in June for the payroll period June 1–15, effective June 1. Those records also reflect that a substantial number of restaurant employees under Sanchez in the kitchen crew received increases in the latter part

[30] The Respondent contends that findings of unfair labor practice or election interference may not be predicated on the conduct of Palacio (see sec. B, above) and Erdos towards Herrera on the grounds that she was a supervisor within the meaning of the Act at the time the alleged acts occurred. The Respondent also contends that the representation case should be dismissed on the grounds the authorization cards which formed the basis for Local 498's petition for certification in the representation case were tainted by Herrera's solicitation thereof. I reject both contentions, finding at times pertinent that Herrera was not a supervisor within the meaning of Sec. 2(5) of the Act. Between April and August, Herrera was classified as a floor supervisor, along with four other hotel employees. Their duties were to inspect the work of the maids in the hotel sections to which they were assigned, make sure they did their work properly, handle any guest complaints which arose in their sections (absence of items, malfunctions, recleaning, etc.). If dissatisfied with the performance of any maid or houseman in their sections, they reported the source of their dissatisfaction to Palacio and she took whatever action she deemed necessary. The floor supervisors and all other classifications recommended the hire of various persons from time to time; sometimes their recommendations were adopted, sometimes they were not. They could and did reassign maids within their sections from time to time to accomplish necessary cleaning in a timely fashion (Palacio made the initial assignments by floor and room). They did not process requests for time off (other than to pass on such requests to Palacio for decision) or layoff or recall employees, and they did not discharge them. (While Erdos testified that Herrera effectively recommended the discharge of an employee, his pretrial affidavit corroborates Herrera's testimony that on one occasion she reported to Erdos that one of the maids was drunk and, in accordance with Palacio's instructions, she sent her home—and Erdos and Palacio, after a later conference, decided to discharge that employee. Erdos' affidavit also contradicts his testimony and corroborates the testimony of Herrera and Palacio to the effect that Herrera and the other floor supervisors neither had nor exercised the power to hire, fire, discipline, layoff, recall, or grant time off to employees.) The floor supervisors did not promote employees and, on the one occasion when Palacio asked Herrera for a recommendation to fill a vacant floor supervisor position, Palacio rejected Herrera's recommendation. All the floor supervisors, including Herrera, were included in the eligible voter list prepared and submitted by the Respondent to the Regional Office for use at the election and they voted in the election without challenge. Herrera's workweek was Wednesday through Sunday; on Saturday and Sunday, she substituted for Palacio in the sense she checked to see if the maids reported as assigned on those 2 days and called in replacements for any no shows from a list Palacio prepared, plus extending her work checks beyond her section. I find these extra weekend duties insufficient to remove Herrera from the same employee status as the other floor supervisors. I therefore find at times pertinent Herrera and the other floor supervisors were not supervisors and agents of the Respondent acting on its behalf within the meaning of Section 2(5) of the Act.

of May for the payroll Period May 1–15, effective May 1, and in June.

Marzorati testified that the Respondent adjusts wages with each increase in the Federal minimum wage,[31] bringing any employee below the minimum up to it; that the supervisors in charge of each department conduct biannual reviews of the job performance of each of the employees under their direction and, following such reviews, submit recommendations for his approval for wage increases for each employee whose work they found sufficiently satisfactory to warrant a wage increase; that each supervisor has discretionary power to decide which employees deserve increases and which do not, and he normally accepts their recommendations; that the supervisors also have discretionary power to recommend employees under their supervision for merit increases outside the regular review periods; and that the job performances of all new hires are reviewed by their supervisors on their completion of their 3-month probationary period and, if their work is satisfactory, normally the new hires are recommended for and receive increases.

A review of the wage histories of the Respondent's restaurant and hotel employees contained in the summaries of the Respondent's payroll records and testimony of the Respondent's own witnesses contradicts Marzorati's testimony; an examination of the summary of the Respondent's payroll records prepared by the Respondent's payroll clerk, Donna Downey, covering a period extending far before the time the Union's organizational campaign began, fails to show any pattern of biannual wage adjustments; both Sanchez and Downey testified that there was no such review policy in effect prior to the Union's organizational efforts; and Downey testified that Palacio's predecessor as executive housekeeper never conducted such reviews.[32] An examination of the payroll summaries further reveals that almost all of the increases received by employees in late June, effective June 1 for the payroll period June 1–15, were granted to maids and housemen hired between April 28 and May 25; i.e., prior to their having completed their alleged probationary periods and subsequent to the approval and grant of the increases received in early May. It is further evident that many of the employees who received the May and June increases also received increases effective January 1, 1979, to comply with the minimum wage law increase on that date.[33]

Findings have been entered that on April 23 Marzorati, Erdos, and Palacio became aware of Local 498's campaign to organize the Respondent's hotel employees and its possible extension to the restaurant employees, confirmed during the week of May 7–11 by a report to Erdos and transmitted to Marzorati and Sanchez; on the basis of those findings and the above findings concerning the timing and generality of the increases, plus the false explanation given therefor, I find, that as alleged, the Respondent granted wage increases to its employees between May 1 and June 30 to discourage their union support, in violation of Section 8(a)(1) of the Act, and thereby also interfered with employee free choice in the July 12 election.

I. *The Alleged July Threats, Promises, and Grievance Solicitations—Marzorati*

The complaint and election objections allege that, at meetings conducted by Marzorati in July, Marzorati offered and promised to hotel employees paid sick leave, paid holidays, increased wages, a new dental plan, and free uniforms; threatened hotel employees with reduced health benefits, loss of a personal loan program, and the futility of supporting Local 498, since the Respondent would not sign a contract wich Local 498; and solicited and promised to resolve employee grievances, all for the purpose of discouraging the hotel employees from supporting Local 498, thereby violating Section 8(a)(1) of the Act and inhibiting an employee's exercise of a free choice in the election.

It is undisputed that Marzorati summoned Respondent's employees in the housekeeping department to two meetings, one in either late June or early July, and the other day before the July 12 election, and that Marzorati summoned the Respondent's floor supervisors to several meetings during the same period.

During the course of the general meetings, Marzorati produced and identified a document as the current contract between Local 498 and the Oxnard Hilton,[34] and maintained that:

1. The health benefits currently provided to the hotel employees by the Respondent were superior to those provided under the Hilton-Local 498 contract, detailing the alleged differences.

2. The Hilton-Local 498 contract provided for the payment of the Federal minimum wage, while the Respondent paid rates above that minimum and was establishing a committee to make a quarterly review and adjustment of wages.

3. The Hilton-Local 498 contract did not provide paid sick leave, and the Respondent was considering granting that benefit.

4. The Hilton-Local 498 contract did not provide premium pay for the holiday work, and the Respondent was considering granting that benefit.

5. The Hilton-Local 498 contract did not provide dental benefits and the Respondent was considering such a plan.

6. In the event the employees voted for representation by Local 498, they would receive the wages and benefits set out in the Hilton-Local 498 contract; they would have to pay union dues and would receive nothing in return; they would lose the benefit of the Respondent's personal loan policy, since it could not be continued without Local 498's agreement, Local 498 would not agree to its continuance, and Local 498 would not provide any loans; and, if Local 498 sought "unreasonable" wages and benefits in excess of those provided in the Hilton-Local 498 contract, the Respondent would not agree and the employees would have to go on strike,

[31] Most new employees were hired at the prevailing minimum wage; on January 1, 1979, the minimum wage was increased to $2.90 per hour.

[32] Palacio succeeded to that position in early 1979.

[33] With some compliance exceptions.

[34] A hotel near the Respondent's hotel.

which they could not afford, while Local 498's officials would continue to ride around in big Cadillacs and draw big salaries.

7. In response to an inquiry concerning the accuracy of alleged statements by Palacio to the effect the maids were going to have to provide part of their work clothes, Marzorati stated that the Respondent would continue its policy of providing full uniforms, and would reimburse any maids for the cost of any portion of her work clothes she had to purchase; Marzorati closed by urging the employees to vote against union representation.[35]

At several July meetings limited to Marzorati and the floor supervisors, Marzorati informed the floor supervisors that he excluded Palacio from the meetings so they could speak freely; stated he suspected employee interest in union representation stemmed from problems he was unaware of; asked what problems were troubling the employees; listened to their recitation of problems over inadequate supplies, understaffing, overwork, nepotism and favoritism (Palacio's son and daughter worked in housekeeping), and Palacio's ignoring and failing to rectify employee complaints; and promised to take care of some of the problems expressed.

On the basis of the foregoing, I find that in July, by Marzorati, the Respondent by implication promised hotel employees new and improved wage adjustment practices (quarterly wage reviews); promised its employees potential improvements in benefits (paid sick leave, premium pay for holiday work, dental plan, and wage increases from the reviews) if they voted against union representation; threatened them with the loss or reduction of current wage rates and benefits (wages, health benefits, personal loans) and potential benefits (paid sick leave, premium pay for holiday work), if they voted for union representation; threatened them with the futility of voting for such representation (refusing to sign any contract containing wage rates and benefit provisions in excess of those allegedly contained in the Hilton-Local 498 contract); and solicited and promised to resolve their grievances, thereby violating Section 8(a)(1) of the Act and interfering with an employees' exercise of free choice in the election.

J. *The Alleged July 11 Interrogation—Marzorati*

The complaint and election objections allege that on July 11 Marzorati interrogated an employee concerning her union activities, sympathies, and desires, thereby violating Section 8(a)(1) of the Act and interfering with an employee's exercise of free choice in the election.

Mixon testified that after the July 11 meeting closed and as Marzorati and the maids were leaving the meeting room, she approached Marzorati, stated that she applied several times for the promotion to the position of floor supervisor, that she was promised a promotion, that others with less service time were promoted instead, that she thought that was unfair, that Marzorati replied that he would look into the matter, that Marzorati asked if she were for the Union, and that she replied no.

Marzorati corroborated Mixon's testimony concerning her approach and complaint, but stated that he replied that such promotions depended on Palacio's recommendations, that he would check with Palacio to see if she were willing to recommend Mixon for promotion, that he did not inquire into Mixon's views on union representation, and, as Mixon and he parted, he simply commented that he hoped his message came across and Mixon would support the Company at the election.

I credit Mixon's testimony; her testimony was candid and straightforward. Marzorati's testimony, as noted heretofore, was not credible in a number of instances.

I therefore find and conclude by Marzorati's July 11 interrogation of Mixon concerning whether or not she supported the Union, the Respondent violated Section 8(a)(1) of the Act and inhibited an employee's exercise of the voting franchise in the July 12 election.

K. *The Alleged July 12 Interrogation—Palacio*

The complaint and election objections allege that on July 12 Palacio interrogated an employee concerning her union activities, sympathies, and desires, thereby violating Section 8(a)(1) of the Act and interfering with the employee's exercise of free choice in the election.

E. Cortez testified that on the day of the election (July 12), prior to the election (it was held in the afternoon), Palacio asked her what she thought about the Union, she replied she did not know, and Palacio stated that the employees never would get union representation because Marzorati would not sign a union contract.

Palacio denied making the statements attributed to her by E. Cortez.

Findings have been entered above finding E. Cortez' testimony reliable and Palacio's unreliable; I find, in this instance as well, E. Cortez' testimony was forthright and convincing and is credited.

I therefore find that, by Palacio's July 12 interrogation of E. Cortez concerning her union sympathies and conveying the impression it was futile to support Local 498 in the election because Marzorati would not sign a contract with it, the Respondent violated Section 8(a)(1) of the Act and interfered with an employee's exercise of free choice in the election.[36]

L. *The Alleged July 12 Instructions to Eligible Employees Not To Vote in the Election—Palacio*

The complaint and election objections allege that on July 12 Palacio told an employee eligible to vote in the July 12 election she was not eligible to vote, thereby violating Section 8(a)(1) of the Act and interfering with an employee's exercise of the voting franchise in the election.

It is undisputed that on July 12 Palacio told maid Velia Vildosolo she was not eligible to vote in response to the latter's inquiry and that she instructed Dykes not to telephone maid Sharon Henderson and tell her to

[35] These findings are based upon the mutually corroboratory testimony of Dykes, Herrera, and Mixon, which I credit, plus partial corroboration by Marzorati.

[36] Since the Respondent had ample opportunity to litigate the latter matter, I find it constitutes an additional violation.

come in to vote, on the ground Henderson was ineligible to vote.[37] It is also undisputed that the payroll eligibility date for participation in the election was June 8 and both Vildosolo and Henderson were hired subsequent to June 8.

I therefore find that Palacio advised Vildosolo she was ineligible to vote and instructed Dykes not to telephone Henderson to come in and vote under the correct impression that Vildosolo and Henderson were not eligible to vote and therefore the Respondent did not violate Section 8(a)(1) and interfere with those two employees' election franchise.

M. *The Alleged July 12 Threat—Palacio*

The complaint and election objections allege that on July 12 Palacio threatened an employee with the discharge of those employees who supported Local 498 in the election campaign, thereby violating Section 8(a)(1) of the Act and interfering with an employee's free choice in the election.

I credit Dykes' testimony that on July 12 Palacio told Dykes the Company knew which employees started the Union and they would be fired when the Union lost the election; the threat is consistent with Palacio's earlier statement the Respondent fired supporters of a union after a previously unsuccessful organizing attempt at the hotel and Dykes was a convincing witness, while Palacio was not.

I therefore find that by Palacio's July 12 statement to Dykes the Respondent knew which employees started the Union and they would be fired when the election was over, the Respondent violated Section 8(a)(1) of the Act and interfered with employee exercise of a free choice in the election.

N. *The Alleged March 28, 1980, Threat To Reduce Benefits and Wages If the Hotel Employees Sought and Secured Representation by Local 498—Daly*

The complaint alleges that on March 28 Erdos and Labor Relations Consultant Terence Daly[38] threatened to reduce benefits and wages if the hotel employees sought and secured representation by Local 498, thereby violating Section 8(a)(1) of the Act.

Sometime in March Marzorati advised Daly the hotel employees were concerned over the forthcoming hearing on Local 498's unfair labor practice charges and election objections and assigned Daly to address the hotel employees to explain the purposes of the hearing and any subsequent events flowing from it which would affect them, and to answer any questions the employees wished to ask.

The meeting was scheduled for and held on March 30 with the hotel employees Local 498 sought to represent, Erdos and Daly, in attendance. After introducing Daly, Erdos left the meeting. Daly designated a bilingual employee to repeat his comments to the assembled employees in Spanish.

Daly informed the employees that a hearing had been scheduled to determine the merits of Local 498's charges and election objections and the end result might be a second election. He then asked for any questions. Instead of asking him questions concerning the hearing, the possible results thereof, etc., the employees asked questions about what levels of wages, benefits, etc., they might expect if Local 498 became their bargaining representative. Daly responded by displaying a document he identified as the current agreement between Local 498 and the Oxnard Hilton, and repeated many of the statements Marzorati uttered in his two meetings with the employees prior to the July 12 election; i.e., that the health and life insurance benefits set out in the contract were inferior to those currently provided for by the Respondent, that the contract provided payment of the minimum wage ($3.10) and the Respondent currently paid wage rates higher than the minimum wage, and that the employees would receive the level of wages and benefits set out in the contract in the event they secured representation by Local 498.[39]

I find that by the foregoing on March 28, 1980, Daly conveyed to the Respondent's hotel employees assembled at the meeting the impression their wages and health and life insurance benefits would be lowered to those allegedly set out in the Oxnard Hilton-Local 498 contract in the event they voted for representation by Local 498 in a second election, thereby discouraging their continued support of Local 498 and violating Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. At all material times the Respondent was an employer engaged in commerce and in a business affecting commerce and Locals 26 and 498 were labor organizations within the meaning of Section 2(2), (5), (6), and (7) of the Act.

2. At times material Marzorati, Erdos, Palacio, Sanchez, Redfern, and Adford were supervisors and agents of the Respondent acting on its behalf and DeHoyas and Daly were agents of the Respondent acting on its behalf within the meaning of Section 2(11) of the Act.

3. At times material the Respondent's floor supervisors, including Herrera, were not supervisors and/or agents of the Respondent acting on its behalf within the meaning of Section 2(11) of the Act.

4. The Respondent violated Section 8(a)(1) of the Act by:

(a) Interrogating its employees concerning their and other employees' union activities, sympathies, and desires.

(b) Maintaining a surveillance of its employees' union activities.

[37] Henderson was off duty on the day of the election; Palacio instructed Dykes to telephone all the maids who were not scheduled to work that day (July 12) and remind them to come in and vote, making an exception in the case of Henderson.

[38] Daly was retained by the Respondent in early 1979 to assist the Respondent in conducting its campaign to counter Local 498's attempt to organize its hotel employees. I find at times pertinent Daly was an agent of the Respondent acting on its behalf within the meaning of Sec. 2 of the Act.

[39] These findings are based primarily on the testimony of E. Cortez and Herrera and partially by the testimony of Daly, which is credited to the extent it corroborates or amplifies the testimony of E. Cortez and Herrera.

(c) Threatening to demote an employee because of his union activities.

(d) Threatening employees with discharge to inhibit employees from seeking and securing union representation.

(e) Discharging employees to discourage them and other employees from seeking and securing union representation.

(f) Conditioning an offer to reinstate employees discharged to discourage employee union activity on their abstention from union support.

(g) Granting wage increases to discourage employees from seeking and securing union representation.

(h) Promising wage and benefit improvements if employees refrain from seeking union representation.

(i) Threatening wage and benefit reductions if employees secure union representation.

(j) Threatening employees with the futility of securing union representation, by threatening not to sign any contract unless it provided for wage rates and benefits lower than those currently enjoyed by those employees.

(k) Soliciting and promising to resolve employee grievances to discourage their seeking and securing union representation.

5. The Respondent violated Section 8(a)(1) and (3) of the Act by discharging A. Cortez, Cortez Jr., and Merino to discourage them and other employees from seeking and securing union representation.

6. By 4(a), (b), (g), (h), (i), (j), and (k), above, the Respondent interfered with employee exercise of free choice in the July 12 election.

7. The Respondent did not otherwise violate the Act.

8. The above unfair labor practices and election interferences affected and affect interstate commerce within the meaning of the Act.

THE REMEDY

Having found the Respondent engaged in unfair labor practices, I shall recommend it be directed to cease and desist therefrom and take affirmative action designed to effectuate the purposes of the Act. Having found the Respondent discharged A. Cortez, Cortez Jr., and Merino to discourage employee efforts to secure union representation, I shall recommend the Respondent be directed to offer A. Cortez and Cortez, Jr. reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, if necessary terminating any employees hired to replace them, and to offer to Merino on his leaving military service reinstatement to his former position on timely application therefor under the terms of governing statutes, if necessary terminating any employee hired to replace him. I shall further recommend A. Cortez, Cortez Jr., and Merino be made whole for any losses in wages and benefits they have suffered by virtue of the discrimination against them, with the amount due to each of them calculated in the manner set out in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and interest thereon computed in accordance with the formula set out in *Florida Steel Corporation*, 231 NLRB 651 (1977), and *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Having found by a substantial number of the unfair labor practices the Respondent interfered with the employees' exercise of a free vote in the July 12 election, I shall recommend that that election be set aside and a new election conducted when the Regional Director finds the effect of those unfair labor practices and election interferences have been dissipated.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I recommend the issuance of the following:

ORDER[40]

The Respondent, Channel Island Development Corp., d/b/a The Lobster Trap & Casa Sirena Marina Hotel, Oxnard, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist:

(a) Interrogating its employees concerning their and other employees' union activities, sympathies, and desires.

(b) Maintaining a surveillance of its employees' union activities.

(c) Threatening to demote employees because of their union activities.

(d) Threatening to discharge employees to inhibit employees from seeking and securing union representation.

(e) Discharging employees to discourage them and other employees from seeking and securing union representation.

(f) Conditioning an offer to reinstate employees discharged because of their union activities on their abstention from those activities.

(g) Granting wage increases to discourage employees from seeking and securing union representation.

(h) Promising wage and benefit improvements if employees refrain from securing union representation.

(i) Threatening wage and benefit reductions if employees secure union representation.

(j) Threatening employees with the futility of seeking union representation by threatening not to sign any contract with the Union unless it contains wage rates and benefits lower than those currently enjoyed by its employees.

(k) Soliciting and promising to resolve employee grievances to discourage their seeking and securing union representation.

(l) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them under Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the purposes of the Act:

(a) Offer to A. Cortez and Cortez Jr. reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, if necessary terminating any employees hired to replace them.

[40] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(b) Offer to Merino on his leaving military service reinstatement to his former position on timely application therefor under the terms of governing statutes, if necessary terminating any employee hired to replace him.

(c) Make whole A. Cortez, Cortez Jr., and Merino in the manner set out in "The Remedy" section of this Decision.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and any other records necessary to analyze and determine the amounts and benefits due under this Order.

(e) Post at its restaurant and hotel premises known as the Lobster Trap Restaurant & Casa Sirena Marina Hotel in Oxnard, California, copies of the attached notice marked "Appendix."[41] Copies of said notice, on forms provided by the Regional Director for Region 31, after being duly signed by the Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

The election in Case 31-RC-4493 shall be, and is, set aside, and a new election shall be conducted under the auspices of the Regional Director for Region 31 when in his judgment the effect of the unfair labor practices and election interferences set out in this Decision have dissipated.

[41] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."